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12 [Additional Counsel Listed on Signature Page]

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

15 | SVB FINANCIAL GROUP.

Plaintiff.

V.

18 FEDERAL DEPOSIT INSURANCE
19 CORPORATION, as Receiver for Silicon Valley
Bank and Silicon Valley Bridge Bank, N.A.,

Defendants.

Case No. 5:24-cv-01321-BLF

**JOINT STIPULATION AND
[PROPOSED] ORDER TO
SUBSTITUTE PLAINTIFF AND
AMEND CASE CAPTION**

Courtroom: 3 – 5th Floor
Judge: Honorable Beth Labson Freeman

Pursuant to Rules 7-11 and 7-12 of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California, and with the consent of Defendants Federal Deposit Insurance Corporation, as receiver for Silicon Valley Bank of Santa Clara, California (“FDIC-R1”) and receiver for Silicon Valley Bridge Bank, N.A (“FDIC-R2,” collectively, the “FDIC-Rs”), Plaintiff SVB Financial Group (“SVBFG”) requests entry of an Order under Federal Rule of Civil Procedure 25(c)¹ amending the case caption to reflect the substitution of SVB Financial Trust (the “Trust”, and collectively with FDIC-Rs and SVBFG, the “Parties”) for SVBFG as plaintiff in the above-captioned case (the “Action”), for the reasons set forth below:

WHEREAS, on March 17, 2023, SVBFG filed a petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York;

WHEREAS, on August 2, 2024, the Bankruptcy Court confirmed SVBFG’s Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the “Plan”) pursuant to the Findings of Fact, Conclusions of Law and Order Confirming the Debtor’s Second Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code, *In re SVB Financial Group*, No. 23-10367 (MG) (Bank. S.D.N.Y. Aug. 2, 2024), Dkt. 1379 (the “Bankruptcy Court’s Order”);

WHEREAS, Section 5.5 of the Plan provides that “[o]n the Effective Date, [the Trust] shall be deemed to be substituted as the party to any pending litigation . . . in which the Debtor [(SVB Financial Group)] is a party . . .”;

WHEREAS, the Action was pending as of August 2, 2024 and remains so;

¹ The parties disagree whether the Trust was automatically substituted for SVBFG as plaintiff in this case pursuant to the Plan or whether there is discretion to substitute the Trust for SVBFG. The FDIC-Rs’ position is that substitution of a party following a transfer of interest requires a motion under Federal Rule of Civil Procedure 25(c), but “[e]ven when an interest is actually transferred, Rule 25(c) does not mandate substitution or joinder.” *Beatbox Music Pty, Ltd. v. Labrador Entm’t, Inc.*, 2021 WL 3163759, at *2 (C.D. Cal. Feb. 26, 2021) (collecting cases). Rather, “[t]he trial court has discretion to grant or deny substitution under Rule 25(c).” *Bullets2Bandages, LLC v. Caliber Corp.*, 2019 WL 5684400, at *3 (S.D. Cal. Nov. 1, 2019). Nevertheless, on the basis of the assurances and representations in this stipulation, FDIC-Rs consents to the substitution.

1 WHEREAS, the Plan became effective on November 7, 2024;

2 WHEREAS, the Trust represents to the FDIC-Rs that the amendment of the caption in
3 the Action to reflect the substitution of the Trust for SVBFG as plaintiff will have no impact on
4 any potential counterclaim or defense that FDIC-Rs or the Trust may assert in the Action;

5 WHEREAS, the Trust represents and agrees that it has possession, custody, and control
6 over every document, custodial file, information, and potential witness that SVBFG has or
7 would have had, had it remained in this Action, in its possession, custody, and control;

8 WHEREAS, the Trust represents to the FDIC-Rs that the amendment of the caption in
9 the Action to reflect the substitution of the Trust for SVBFG as plaintiff will have no impact on
10 the discoverability or admissibility of any evidence in the Action, or the ability of the Trust to
11 access and make available for deposition SVBFG witnesses as would SVBFG, or on any
12 deadline in the Actions;

13 WHEREAS, the Trust agrees that it will present no evidence and make no argument at
14 trial regarding the distinction between the Trust and SVBFG; and

15 WHEREAS, based on the representations of the Trust in this stipulation, the FDIC-Rs
16 do not oppose the amendment of the case caption in the Action to reflect the substitution of the
17 Trust for SVBFG.

18 NOW, THEREFORE, SVBFG respectfully requests, with the consent of the FDIC-Rs,
19 that the Court enter an Order that:

20 The caption of the Action shall be amended to reflect the substitution of SVB
21 Financial Trust for SVB Financial Group as plaintiff in the Action.

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1 Pursuant to this stipulation and request, the caption for the filings in the Action would
2 appear as follows:

3 SVB FINANCIAL TRUST,

4 Plaintiff,

5 v.

6 FEDERAL DEPOSIT INSURANCE
7 CORPORATION, as Receiver for Silicon Valley
Bank and Silicon Valley Bridge Bank, N.A,

8 Defendants.

Case No. 5:24-cv-01321-BLF

10 IT IS SO STIPULATED.

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1 Dated: January 31, 2025

DAVIS POLK & WARDWELL LLP

3 /s/ Elliot Moskowitz

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19 *Attorneys for Plaintiff SVB*
20 *FINANCIAL TRUST*

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1 Dated: January 31, 2025

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25 *Counsel to the Federal Deposit Insurance*
26 *Corporation, as Receiver for Silicon Valley Bank*
27 *and Silicon Valley Bridge Bank, N.A.*

ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document.

Date: January 31, 2025

/s/ Elliot Moskowitz
Elliot Moskowitz

1 **[PROPOSED] ORDER**
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4 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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HON. BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE